

IN RE: DEVELOPMENT PLAN HEARING and * BEFORE THE
 PETITION FOR SPECIAL HEARING -
 SE/S Ivy Hill Road, 1,000' NE of Falls Rd. * ZONING COMMISSIONER
 (Ivy Manor II)
 8th Election District * OF BALTIMORE COUNTY
 3rd Councilmanic District *
 * Cases Nos. ~~VII~~-701 & 99-149-SPH
 * VIII
 Arthur D. McComas, Jr., et ux, Owners;
 Ivy Manor LLC, Developer *

* * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Zoning Commissioner/Hearing Officer for consideration of a development plan prepared by Daft-McCune-Walker, Inc., for the proposed development of the subject property by its owners, Arthur D. McComas, Jr., and his wife, June R. McComas, and the Developer, Ivy Manor LLC, by Melvin C. Benhoff, President, with eight (8) single family building lots. The identity of the Developer/Applicant is actually in dispute and will be addressed hereinafter. However, it is apparent that the property was originally owned by Arthur D. (Douglas) McComas and June R. McComas, his wife, and was/is under contract of sale to Melvin C. Benhoff, a Developer. Mr. Benhoff is apparently the moving force behind the proposed development of the subject site and submitted the plan under the name "Ivy Manor LLC." In addition to development plan approval, the Owners/Applicants request a special hearing to approve two non-density areas for split-zoned portions of Lots 7 and 8, specifically, the R.C.4 zoned portion of Lot 7, and the R.C.5 zoned portion of Lot 8. The subject property consists of a gross area of 33.5 acres, more or less, split zoned R.C.5 (23.85 acres) and R.C.4 (9.65 acres), and is located adjacent to Ivy Hill Road near Falls Road in northern Baltimore County. The proposed development and requested special hearing relief are more particularly described on the red-lined development plan which was submitted and marked into evidence as Developer's Exhibit 1.

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As to the history of this project through the development review process as codified in the Baltimore County Code, a concept plan of the proposed development was submitted and a conference held thereon on April 27, 1998. As required, a community input meeting was held on May 27, 1998, with a second community input meeting held thereafter on August 11, 1998. Both meetings were held at the Chestnut Ridge Volunteer Fire Hall. Subsequently, a development plan was submitted and a conference held thereon on November 4, 1998. Following the submission of that plan, development plan comments were submitted by the appropriate reviewing agencies of Baltimore County and a red-lined development plan incorporating these comments was submitted at the Hearing Officer's Hearing, which was held over three consecutive hearing dates, namely, December 2, 3, and 4, 1998. At the request of the parties, written memoranda were submitted by Counsel following the final hearing day on December 4, 1998. By agreement, Counsel were permitted to file memoranda by no later than January 15, 1999.

Appearing at the public hearing required for this project were Melvin Benhoff, Developer of the subject property, Ed Haile, Toni Vitti and Eric Hadaway, representatives of Daft-McCune-Walker, Inc., and G. Scott Barhight, Esquire, attorney for the Owners/Developer. Numerous representatives of the various Baltimore County agencies who reviewed the plan attended the hearing, including Donald Rascoe, Project Manager, Stephany Wright, Bob Bowling, and Kate Milton, all representatives of the various development plan and zoning review divisions of the Department of Permits and Development Management (DPDM); R. Bruce Seeley with the Department of Environmental Protection and Resource Management (DEPRM), and Jeffrey Long with the Office of Planning (OP). Among the Protestants participating in this case were Jack Dillon, Executive Director of the Valleys Planning Counsel, and several residents from the surrounding locale, including David B. Smith, James and Nancy Mugele, Adine and Hale Panitch, John and Sharon Love, Liz and Phil Briscoe, Michael and Nancy Kelbaugh, and Lee Schmidt and Lynn Ludmer, all represented by John R. Wise, Esquire, and C. Victoria Woodward, Esquire. Adjoining property owners and Protestants, Mark and

Sheila Bertoldi, were represented by Michael B. Sauer, Esquire. Many of the parties identified hereinabove appeared and testified at the hearing, and expert witnesses were called by both sides. Testimony and evidence offered is fully recounted in the written transcript of this case which, by agreement, will serve as the record of this case. A copy of that transcript, as prepared by the Court Reporter, was submitted with the Developer's Memorandum and relevant testimony will be recounted hereinafter as is appropriate.

This matter came before me for both development plan approval and consideration of a Petition for Special Hearing, pursuant to Section 26-206.1 of the Baltimore County Code. That Section allows the Developer to proceed under a single public hearing for both development plan approval and zoning relief. As noted above, the general scheme of the proposed development is to subdivide the subject property into eight single family dwelling lots, as more particularly shown on the plan. Vehicular access to the individual lots will be by way of a public road, which will provide access to Ivy Hill road. This road will terminate in a cul-de-sac and therefrom, two private roads, shown on the plan as Private Drive B and Driveway C, will provide additional access to the interior of the site. All of the individual lots will be at least 2.50 acres in area, with most significantly larger. This is an area without public utilities, thus, each site will be served by an individual well and septic system. The area at large is characterized by substantially sized dwellings on large lots. The subject parcel under consideration is immediately adjacent to another parcel previously owned by Mr. & Mrs. McComas and developed as a residential subdivision known as Broadmede. In fact, many of the Protestants reside within that subdivision and obtain vehicular access to their properties by way of an existing private driveway that intersects Ivy Hill Road. The Developer proposes to improve this existing roadway and dedicate same to Baltimore County as a public road. Thereafter, it will be used by the potential lot owners of the Ivy Manor II subdivision.

Pursuant to Section 26-206 of the Baltimore County Code, which regulates the conduct at the Hearing Officer's Hearing, I am required to first identify any unresolved agency

comments or issues. In this regard, there were a number of issues identified by the parties, each of which has been addressed below.

ISSUE 1: Legal Status of the Applicant: The application for the proposed development was brought by an entity known as Ivy Manor LLC, through its President, Melvin Benhoff. The undisputed testimony and evidence offered by the Protestants was that no such entity exists in Maryland. Specifically, the Protestants produced a certification from the Maryland State Department of Assessments and Taxation indicating that Ivy Manor LLC (a Limited Liability Company) is not registered with that Division of the State (See Protestant's Exhibit 12).

The Protestants claim that this failure is fatal to any approval of this project. Indeed, Section 26-203(b)(3) of the Code requires that the applicant's name and address be listed on the development plan. Moreover, Section 26-168 defines "applicant" as "Any person who is an owner, a contract purchaser, or the legally authorized representative of either requesting approval of the development plan pursuant to these regulations." Attempting to cure this deficiency, Mr. Benhoff produced the testimony of Mr. Arthur D. (Douglas) McComas, present owner of the subject property. Mr. McComas testified that he and his wife were owners of the subject property, that they had entered into a contract to sell the parcel to Mr. Benhoff, or one of his entities, and that they consented to Mr. Benhoff and/or one of his entities, applying for development plan approval.

In interpreting the regulation at issue, I am mindful that the cardinal rule of statutory construction requires the Hearing Officer to ascertain the intent of the legislature. (See, e.g. State vs. Fabritz, 276 Md. 416 (1975) and Dept. of Economic and Employment Development vs. Lilley, 106 Md. App. 744 (1995). In this case, it is clear that the County Council required the applicant's name and address to appear on the development plan in order to facilitate the flow of correspondence and communication between the County, the Developer and other interested parties during the development plan review process. The process requires a Developer/Applicant make certain submissions to the County, to coordinate the community

input meeting, etc. Obviously, regular contact with that individual/entity to ensure compliance with those requirements is necessary.

In this case, it is obvious that Mr. & Mrs. McComas were the owners of the property and that the development is proposed by Mr. Benhoff and/or one of his entities. I do not see the failure of the Ivy Manor LLC to register with the State of Maryland as fatal on this development plan. The identity of the persons seeking development plan approval is clear. The Protestants know the identity of those individuals whose plan they seek to defeat. The record of this case indicates no disruption of the flow and exchange of information between the Developer, the County, and the Protestants.

Moreover, there is no finding of any prejudice to the Protestants caused by this technical defect. The Protestants claim within their Memorandum that they have, "...the unequivocal right to know the reputation and quality of the work of the proposed Developer." This assertion is simply not true. Frequently, development plans are approved when the ultimate builder is unknown. The Developer may sell individual lots to different builders, none of whom are identified during the development review process. For the purposes associated with considering this plan, I am satisfied that sufficient information has been made available to this Hearing Officer to permit an orderly and appropriate review of the merits of the project. I will not deny this plan based upon the fact that the legal identity of the applicant is unclear. Although there may be a different ramification to this defect in a court of law, the failure here does not rise to the level sufficient to justify a denial of the plan in this quasi-judicial/administrative forum.

ISSUE 2: Proposed 12-foot Fee Simple Strip: The development plan submitted shows the existence of a 12-foot wide fee simple strip running along nearly the entire length of the property's western border. The plan indicates that the ownership of this strip will be retained by Mr. & Mrs. McComas. As noted above, Mr. & Mrs. McComas currently own the subject property, but are under contract to sell same to Mr. Benhoff, who will actually develop the parcel. Mr. McComas offered testimony at the hearing as to the reasons supporting his

retention of this 12-foot wide strip. Essentially, he indicated that he desires to retain a means of access to Ivy Hill Road from his dwelling lot, which is located south of the subject property. That is, Mr. & Mrs. McComas may ultimately improve this 12-foot wide strip with a driveway in order to provide vehicular access to their lot from Ivy Hill Road. Within its memorandum, the Developer supports the imposition of a condition within this Order, pursuant to Section 26-206(o) of the Baltimore County Code, permitting the strip and requiring landscaping to same.

The overwhelming weight of the testimony and evidence offered at the hearing is that the strip is both unnecessary and could be detrimental to surrounding properties. Mr. McComas conceded during his testimony that his dwelling lot presently has access to Falls Road, by way of a right-of-way which leads from his lot to that public street. Additionally, he indicated that he had not used the existing means of access to Ivy Hill Road for nearly five (5) years. Substantial testimony was offered on this point by not only Mr. McComas, but other residents of the community, who testified that Mr. McComas has neither utilized, nor needs a means of vehicular access from his property to Ivy Hill Road. Mr. McComas himself testified that he has used the present means of access to Falls Road for the many years he has lived on the property (since 1964).

Testimony offered by Mr. Haile, the engineer for this project, was that this strip serves no particular purpose in terms of the development proposed. Mr. Haile also conceded the validity of a point raised by this Zoning Commissioner during my direct questioning. Specifically, I asked why vehicular access to the McComas dwelling lot could not be provided from the cul-de-sac which terminates at the end of Private Drive C. Such a connection would be further from the tract boundary, thereby impacting adjacent houses less. Additionally, it would be consistent with the overall scheme of the proposed development and not require extensive construction.

Additionally, Mr. Haile conceded that the 12-foot wide strip is indeed part of a 50-foot setback from the property line as shown on the plan. In my judgment, use of the strip as part of the setback is improper. The setback should be measured from the tract boundary. If

Mr. & Mrs. McComas retain the 12-foot wide strip, the tract boundary and ultimate property owner of Lot 1 will be different owners.

Last, and perhaps most importantly, construction of a road on the 12-foot wide strip would indeed detrimentally impact adjacent properties, including that lot owned by Mr. & Mrs. Bertoldi. Although Mr. McComas offered to install landscaping and other buffering of this strip, I believe that the construction of a driveway along that entire strip would inappropriately impact surrounding properties.

For all of these reasons, I will not approve the plan to permit retention of the 12-foot wide strip by Mr. & Mrs. McComas. I find that such retention is not only unnecessary, but that it will result in a negative impact on adjacent properties. Mr. & Mrs. McComas can either continue to use their existing access to Falls Road, or seek alternate means of access, (e.g. connecting to the cul-de-sac at the end of Private Drive C). This plan must therefore be amended to eliminate the strip.

ISSUE 3: Failure to Comply with Section 26-203 of the Code. Another objection raised by the Protestants related to an alleged failure of the plan to comply with the requirements of Section 26-203 of the Code. That Section is captioned, "The Development Plan" and identifies the information that must appear on the plan. The Protestants correctly note that the language used by the legislature in this Section (i.e. "shall) imposes certain requirements upon the Developer. That is, the Developer must insert the required information on the plan.

The Protestants allege that the plan is deficient in a number of respects. As more fully set forth in their memorandum, the Protestants aver that the plan fails to show a suitable outfall for storm water management as required by Section 26-203(b)(10). It is also alleged that the plan fails to note unresolved issues and/or comments which were raised at the Community Input Meetings, pursuant to Section 26-203(e).

In addition to these two specific sections, the Developer's memorandum identified a number of specific sub-sections that were referenced at the hearing, although not in the Protestants' brief. Such items included the alleged failure of the plan to contain the signature of

the engineer who prepared same (Section 26-206(b)(11); an alleged failure of the plan to show proposed lots (Section 26-203(d)(1); that the plan failed to disclose the existence of hazardous materials (Section 26-203(c)(10); whether the plan fails to identify wetlands (Section 26-203(c)(7); whether the plan failed to show existing buildings and access points on adjacent properties (Section 26-203(b)(7); and whether the plan failed to show existing topography for adjacent properties (Section 26-203(c)(1).

As to all of these issues, I find no fatal flaw. As noted above, it is a requirement of this Hearing Officer to ascertain the intent of the legislature (County Council) in drafting the development regulations. It is clear that the legislature intended that the development plan be a clear and concise schematic representation of the proposed development. The Council intended that sufficient information be provided on the plan to enable the Hearing Officer, the reviewing County agencies, and other interested parties the opportunity to understand the specifics of the proposed development.

Moreover, the administrative practice of the County in implementing the development review process, has furthered this intention. For example, the file contains the minutes of the Community Input Meetings, which restate in detail the concerns expressed by concerned citizens. To add these minutes on the plan would be superfluous.

As to adjacent properties, a plan showing the topography and buildings on the entire acreage of a large adjacent tract would be too unwieldy. That is, if every aspect of the topography and adjacent properties and/or buildings were shown, the plan might be so large as to depict hundreds of acres. Clearly, this is not what the legislature had in mind.

In sum, I believe the plan sufficiently complies with the requirements of Section 26-203. I believe that the information provided in the plan and contained in the file is sufficient to enable me to make an intelligent evaluation of the proposal. I believe that the plan meets the spirit and intent of the legislation. In most cases, the actual letter of the law is also specifically met. The testimony of Mr. Haile on this issue is persuasive. For all of these reasons, I find that the plan should not be denied on this basis.

ISSUE 4: Panhandle Lots/Driveways: An issue raised by the Protestants relates to the applicability of the panhandle regulations as contained in Section 26-266 of the Code. The Protestants frame the issue quite simply; to wit, that the internal road system serving the lots in the subject subdivision is a panhandle driveway serving panhandle lots. Since the requirements for such driveways and lots, as set out in Section 26-266, are not met on this plan, the plan must be denied. The Developer contends that the driveways and lots are not panhandle, by definition, and thus, there is no requirement for compliance with the regulations set forth in Section 26-266. A review of the plan shows that all lots served by a private drive (i.e., non-public road) are in excess of 3 acres.

Both the terms "panhandle driveway" and "panhandle lot" are defined in Section 26-168 of the Code. A panhandle driveway is defined as "The paved roadway which serves one (1) or more abutting panhandle lots and provides vehicular access to the local street or to a collector street..." A panhandle lot is defined as "A lot so shaped and situated that its only access to a local or collector street is a narrow strip of land, which is held in fee, except as provided in Section 26-266, and which may contain a panhandle driveway and water and sewer lines or other utilities."

The requirements establish the maximum panhandle length, the number of lots that may be served, the method of panhandle driveway construction, etc. Section 26-266(1) provides that, "Each lot of less than three (3) acres shall include an in fee strip of land providing access to the local street, except as provided in sub-section (2) of this Section."

Relying on this language, the County Board of Appeals has held that lots greater than 3 acres in area, by definition, are not panhandle lots. The Board considered this issue in Case No. 92-179-MP, In Re: Rothman Property. In its opinion, the Board cited the testimony of Thomas A. Church, a Civil Engineer, who stated that a panhandle driveway is not required for any lot greater than 3 acres in area. His testimony was confirmed by Catherine L. Warfield, an engineer, who also testified in that matter. The Board accepted this testimony and concluded, somewhat inartistically, "... these panhandle lots are exempt from the panhandle driveway law

because all three of the proposed lots are 3 acres or greater." Perhaps the Board could have stated with greater clarity that the lots at issue are not panhandle lots, by definition, and that the driveway is not a panhandle driveway, by definition, due to the fact that the proposed lots are 3 acres or greater in area. In any event, it is clear that the Board found that the panhandle driveway regulations are not applicable for lots that are larger than 3 acres.

The Protestants contend that the above is an incorrect statement of law. They cite the Circuit Court opinion in "Petition of Janet Rittenhouse, Case No. 94-CD501. I have reviewed the County Board of Appeals' decision in that case, as well as the Circuit Court opinion authored by the Hon. Dana M. Levitz, Associate Judge of the Circuit Court for Baltimore County. That case came to the Board as an appeal on the approval of a minor subdivision of three lots. Two of the lots proposed were less than 3 acres in area. An examination of the facts in that case shows that one lot was 9.4 acres, the second lot, 2.18 acres, and the third lot, 2.77 acres. Apparently, the Board found that the panhandle driveway regulations were not applicable. In reversing the decision of the Board of Appeals, Judge Levitz found that the Board's determination that the lots were not panhandle lots was incorrect as a matter of law.

Significantly, as it relates to the issue before me, Judge Levitz' decision did not address the 3-acre exemption. That is, in finding that the lots were panhandle lots, he did not consider whether a 3-acre plus exemption existed under law, in that two of the lots were under 3 acres in area. Thus, the Protestants assertion that the Court's decision in the Petition of Janet Rittenhouse, Case No. 94-CD501 overrules to the Board's decision in the Rothman Property, Case No. 92-179-MP, is incorrect. The Circuit Court simply did not address the issue raised in Rothman and did not reverse the Board's interpretation.

The language employed in the County Code is less than precise. The County Council could have unequivocally stated that the panhandle driveway requirements are not applicable for lots over 3 acres in that such lots are not, by definition, panhandle lots. Admittedly, the Council did not express this sentiment with clarity. Nonetheless, it is clear that

the 3-acre exemption has been found by the County Board of Appeals. Moreover, Mr. Haile's undisputed testimony is that County agencies have consistently applied the 3-plus acre exemption through their administrative practice.

Considering these factors on balance, I am not persuaded by the Protestants' arguments. I accept the testimony of Mr. Haile and the County agencies that have reviewed this plan. In this regard, the record is clear that the original comment from the Office of Planning characterizing these lots as panhandle lots was later withdrawn through Mr. Long's testimony at the hearing. In my judgment, the panhandle driveway requirements set out in Section 26-266 are not applicable here. Thus, the plan should not be denied based upon this issue.

ISSUE 5: Access to Ivy Hill Road. In my judgment, the most significant obstacle to potential development of the subject site relates to an issue raised by the parties concerning vehicular access to the proposed lots from Ivy Hill Road.

As more particularly shown on Developer's Exhibit 1, the Developer proposes access to the eight lots by way of an internal road system that leads to Ivy Hill Road. The first portion of this road system is Public Road "A", which extends from Ivy Hill Road into the interior of the property in a southerly direction. The road then terminates as a cul-de-sac near that portion of the property adjacent to the Bertoldi lot. A second roadway is then proposed to extend from that cul-de-sac in an east/west direction through the subject site. That roadway is shown on the plan as Private Drive "B". Lastly, a third roadway shown on the plan is Driveway "C", which runs in a northbound direction off of Private Drive B and provides vehicular access to Lots 1, 2 and 3. It is from Driveway C that a possible connection could be made to the property which is to be retained by Mr. & Mrs. McComas to the south of the site as related in the earlier discussion of the 12-foot in fee strip.

This Hearing Officer has struggled in considering the proper disposition of this issue. Foremost, it is to be noted that the parties do agree on one aspect of this issue; to wit, that the Hearing Officer does not have the ultimate authority to decide whether the proposed means of access to the interior of the site from Ivy Hill Road is legally permissible. As shown on the

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plan and testified about extensively during the course of the hearing, Mr. & Mrs. McComas previously developed portions of their lands and conveyed lots which are adjacent to the subject tract. These lots are also on the south side of Ivy Hill Road and are part of the subdivision known as Broadmede. As part of the development process for those lots, Mr. & Mrs. McComas caused there to be conveyed to each of those lot owners, a fee strip which collectively provides access to their lots. As more particularly highlighted on Developer's Exhibit 3, three strips extend in a fashion adjacent to one another from Ivy Hill Road to the individual lots now owned by Mr. & Mrs. Mugele, Mr. & Mrs. Padussis, and Mr. Schmidt and Ms. Ludmer. Moreover, there are two additional strips that extend in a southerly direction and run adjacent to one another. Those strips serve, respectively, the property owned by Michael and Nancy Kelbaugh, and John and Sharon Love.

It is acknowledged that these strips effectively encompass the entire frontage of the subject property as it abuts Ivy Hill Road, and are owned in fee by the lot owners referenced above. Moreover, it is clear that the Public Road A proposed by Mr. Benhoff/Mr. McComas must be constructed across these strips. However, the Developer contends that it has every right to develop and construct the public road as contemplated; whereas the Protestants contend that without their consent, the road may not be so constructed. Testimony received from these lot owners at the hearing was that they will not consent to the construction of the road.

In addressing this issue, it is to be emphasized that the Hearing Officer's authority is derived from the Baltimore County Code, and, indirectly, the Baltimore County Charter. Mine is a legislatively created position and my hearing room is not a Court of Law. It is agreed by the parties and accepted by this Hearing Officer that I cannot ultimately determine this dispute between the parties. In my judgment, it needs to be resolved in the Circuit Court of Maryland for Baltimore County in accordance with the law. The Zoning Commissioner/Hearing Officer does not have the authority to quiet questions of title and determine rights of property between private owners.

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All of that being said, however, the parties urge competing approaches to resolving this issue in the context of the development review process. The Developer contends that I approve the plan as submitted. Thereafter, if the access issue is properly raised by the institution of a cause of action in the Circuit Court by the Protestants, the issue will be resolved there. To proceed otherwise, the Developer contends, would be highly prejudicial. Simply stated, the Developer contends that the plan meets all access-related requirements set out in the Baltimore County Code, including those requirements contained in Sections 26-203 and 26-262 thereof.

The Protestants, of course, disagree. They contend that the plan fails to meet the requirements of both Sections 26-203 and 26-262. They contend that the plan cannot be approved, in that the Developer has not established that it can legally provide access in accordance with the development plan regulations, as required by Code.

This issue places the Hearing officer on the horns of a significant dilemma. On the one side, I am asked to approve a plan that requires an act (i.e., road construction), which might very well be legally impossible. On the other side, I hesitate to disprove a plan based on an issue outside of my authority and which springs from a dispute as to property rights. I fear that such a denial could result in an inappropriate precedent. If such an approach were liberally applied, nearly every development plan would be denied when an objecting neighbor raised an issue related to his/her property rights.

Turning to the merits, there are two recorded declarations in the Land Records of Baltimore County that need ultimately be interpreted to resolve this issue. The first is the declaration recorded in Liber 7454, Folio 654. That declaration is by and between Mr. & Mrs. McComas, Mr. & Mrs. Love and Mr. & Mrs. Kelbaugh.

Paragraph 4 of said declaration contains a provision which sets out the manner and method to be employed in the event these three families (or their successors) jointly decide to improve the existing driveway. Such language does not support the Developer's contention that a public road can be built, in that this paragraph unequivocally requires that a majority of the

three parties concur for there to be improvements to the driveway. This paragraph seems to describe the process which will be followed when the strip owners desire to improve their driveway, yet, nonetheless, keep it private.

Paragraph 5, however, may provide the Developer some relief. That paragraph requires conveyance of the fee simple interest owned by each party in the event a public road is constructed over the fee simple strips and Baltimore County agrees to accept the road for public dedication. The parties seriously dispute the mandated sequence of these events. The Protestants contend that such a conveyance can be required only after construction and acceptance by the County; whereas, the Developer contends that due to the procedure employed by Baltimore County for construction of public roads, the declaration mandates that the parties agree in advance to the construction of the road and subsequent conveyance to Baltimore County upon completion of the improvements.

The second declaration relates to the other lot owners, Mr. & Mrs. Mugele, Mr. & Mrs. Padussis, Mr. Schmidt and Ms. Ludmer. That declaration is recorded in Liber 8164, Page 352, of the Land Records. In Paragraph 7 thereof, similar language is employed requiring a majority vote of the property owners in the event that there is a mutual desire to improve the common portion of the right-of-way. Again, as with Paragraph 4 in the declaration recorded at Liber 7454, Page 654, Paragraph 7 does not appear to provide the Developer with the necessary foundation to require these lot owners to participate in the construction of a public road. Under Paragraph 9 of the declaration at Liber 8164, Page 352, similar language as contained in Paragraph 5 of the declaration of 7454, page 655, is found. However, the language found is not identical. The language in Paragraph 9 states quite specifically, "If and when a public road is constructed over the 50-foot strip and Baltimore County agrees to accept the road for public dedication, the owners, their heirs and assigns shall convey a fee simple interest to Baltimore County for that portion of their respective panhandles to be used in said public road." (emphasis added) I find it significant that under the language in Paragraph 9, the sequence of events is

more definitively established and that the owners of Lots 2, 3 and 4 are required to convey, only if and when (therefore, after) a public road is constructed.

In any event, this is merely my summary of these documents, which is meaningless as to the ultimate judicial interpretation and implementation of same. Nonetheless, I feel compelled to at least explain my analysis to support the decision which will be rendered hereinafter.

In my judgment, the declarations collectively present a significant obstacle to the development of this parcel with the proposed access. From the Developer's standpoint, I find particularly difficult the language in Paragraph 9 in the declaration contained at Liber 8164, Page 352, which, although mandates conveyance, requires same only after the actual construction of a public road.

Section 26-206 of the Baltimore County Code sets out the Hearing Officer's responsibility in considering a plan. Sub-section (a) thereof states that if no comment or condition remains unresolved after the initial phase of the hearing, the Hearing Officer shall make a finding for the record and approve the plan as submitted. Clearly, there are unresolved comments here; thus, approval cannot be granted, pursuant to Section 26-206(a).

Section 26-206(b) of the Code requires, in the event of a contested hearing, that the Hearing Officer shall grant approval of a development plan that complies with the development regulations and applicable policies, rules and regulations as promulgated in, or referenced by, the Code. Moreover, the Hearing Officer's decision constitutes final action on the development plan. That phrase (i.e., "final action on the development plan") is defined in Section 26-168 of the Code as the approval of a plan as submitted, the approval of a plan with conditions, or the disapproval of a plan.

In my judgment, the plan before me cannot be approved as submitted. Even with modifications to the plan, as required hereinabove (i.e., the elimination of the 12-foot strip), I believe that a legal impediment exists to a significant degree as to prohibit approval of the plan

as submitted. This dispute looms too large to approve this plan. Thus, the plan will not be approved as submitted.

Nonetheless, I am not inclined to disprove the plan. Even the Protestants acknowledge that I do not have the authority to make the ultimate decision on the access issue. I cannot affirmatively state that the plan proposes a legal impossibility; to wit, construction of a public road across the fee simple property owned by the Protestants. If the construction and conveyance of the grounds necessary to support such road can be compelled by a Court of law, then the plan meets muster under the development regulations.

The sole alternative available to the Hearing Officer is to approve the plan with conditions. Reluctantly, this is the decision that I feel compelled to reach in this case. Conditions can be imposed, only in accordance with Section 26-206(o). I easily find that the requirements set out in that Section exist here. Specifically, the access issue was unmistakably raised by a party; there would be an adverse impact on the health, safety and welfare of the community without the imposition of this condition (i.e., the resolution of this issue), the condition will alleviate the adverse impact; and, the condition will not reduce by more than 20% the number of dwelling units proposed.

The condition to be imposed is the requirement that this case be remanded for further proceedings as are necessary to resolve the access issue. Thus, this case shall be remanded to the Development Plan Conference stage. The Developer is hereby directed to take such steps as are necessary to resolve the access issue. In my judgment, there are two avenues available; to wit, the filing of the appropriate proceeding in the Circuit Court of Maryland for Baltimore County to obtain a Court Order, or an amicable resolution between the parties. There may be other avenues not considered by me that are not precluded by my ruling. Assuming that the parties cannot resolve their dispute by agreement, I will direct that the Developer provide the Department of Permits and Development Management (DPDM) a final Order from a Court of competent jurisdiction establishing that Public Road A can be constructed as proposed, notwithstanding the objections of the Protestants. At such time as a final Court Order is

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submitted, this plan shall be fully approved consistent with the comments contained herein, (e.g., elimination of the 12-foot strip) and compliance with all development review regulations, zoning requirements and County agency comments. Upon receipt of such a final Order, the Department of Permits and Development Management shall cause there to be scheduled a continued Hearing Officer's Hearing, at which time the Order, if favorable to the Developer, shall be offered and incorporated as part of the record of this case and the plan fully approved.

Last, a procedural note. It is the intent of this Hearing Officer to retain jurisdiction of this matter until the access issue is resolved in a Court of law or by agreement. This Hearing Officer will eventually issue another Order in this case, either approving the plan and incorporating the Court Order permitting access, or denying approval in the event access is not judicially approved. In the event an approval is granted, the Order issued at that time will incorporate all of the terms and conditions of the decision rendered herein. Thus, it is anticipated that at that time, the parties will be given an opportunity to appeal my ruling on any of the issues previously raised (e.g., removal of the 12-foot strip, a finding that there are no panhandle lots/driveways, etc.) To promote judicial economy, it is anticipated that but a single appeal from my final Order will lie and that the appeal will be ripe only upon the issuance of the Court's Order. The decision rendered herein and the comments made heretofore will be adopted in my final Order.

As to the Petition for Special Hearing, testimony was proffered that there are two lots, namely, Lots 7 and 8 which are split zoned R.C.4 and R.C.5 and that the relief requested is necessary in order to permit their configuration as shown on the development plan. There was no opposition to the relief requested and I find that the proposed configuration of Lots 7 and 8 is appropriate in this instance. Therefore, I shall grant the Petition for Special Hearing, conditioned upon the ultimate approval of the development plan.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent

with the comments contained herein and the restrictions set forth hereinafter, and the Petition for Special Hearing shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner/Hearing Officer for Baltimore County this 29th day of January, 1999 that the development plan for Ivy Manor, identified herein as Developer's Exhibit 1, be and is hereby REMANDED to the Development Plan Conference stage for further proceedings as set forth above; and,

IT IS FURTHER ORDERED that upon receipt of a final Court Order from a Court of law, the Department of Permits and Development Management shall schedule a continued Hearing Officer's Hearing, at which time the Court Order permitting access shall be offered and incorporated as part of the record of this case and the plan fully approved; or, in the alternative, in the event access is not judicially approved, an Order denying approval of the development plan shall be issued.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve two non-density areas for split-zoned portions of Lots 7 and 8, specifically, the R.C.4 zoned portion of Lot 7, and the R.C.5 zoned portion of Lot 8, in accordance with Developer's Exhibit 1, be and is hereby GRANTED, conditioned upon a final approval of the development plan.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.


LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 1/29/99
bjs



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

January 29, 1999

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
SE/S Ivy Hill Road, 1,000' NE of Falls Road (Ivy Manor II)
8th Election District – 3rd Councilmanic District
Arthur D. McComas, Jr., et ux, Owners; Ivy Manor LLC, Developers
Cases Nos. ~~XI~~-701 and 99-149-SPH

VIII

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Development Plan is being Remanded to the Development Plan Conference stage for further proceedings, and the Petition for Special Hearing has been granted, conditioned upon final approval of the development plan, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Arthur D. McComas, Jr., 12405 Falls Road, Cockeysville, Md. 21030
Mr. Melvin C. Benhoff, Ivy Manor LLC, 215 Old Padonia Road, Cockeysville, Md. 21030
Messrs. Ed Haile, Toni Vitti and Eric Hadaway, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Avenue, Towson, Md. 21286
Victoria Woodward, Esquire and John R. Wise, Esquire
100 Light Street, Suite 1100, Baltimore, Md. 21202
Michael B. Sauer, Esquire, 401 Washington Avenue, Suite 802, Towson, Md. 21204
All Protestants; Don Rascoe, DPDM; DEPRM; DPW; OP; R&P; People's Counsel; Files ✓



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

Ivy Hill Road, 610' more or less from
center Line of Falls Road

which is presently zoned RC5/RC4

This Petition shall be filed with the Department of Permits & Development Management

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2 non-density areas for split-zoned portions
of Lots 7 and 8, specifically the RC4 portion
of Line 7, and the RC5 portion of Lot 8.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Developer/Applicant:

~~XXXXXXXXXX~~

Ivy Manor LLC

(Type or Print Name)

By:

Melvin C. Benhoff
Signature Melvin C. Benhoff, Partner

215 Old Padonia Road

Address

Cockeysville MD 21030

City

State

Zipcode

Attorney for Petitioner:

G. Scott Barhight, Esquire

(Type or Print Name)

G. Scott Barhight
Signature

Whiteford, Taylor & Preston LLP
#400, 210 W. Pennsylvania Avenue

Address 410-832-2000

Phone No.

Towson

MD

21204

City

State

Zipcode

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Arthur D. McComas, Jr.

(Type or Print Name)

Arthur D. McComas
Signature

June R. McComas

(Type or Print Name)

June R. McComas
Signature

12405 Falls Road 410-252-0007

Address

Phone No.

Cockeysville

MD

21030

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

G. Scott Barhight, Esquire

Name Whiteford, Taylor & Preston LLP, #

210 W. Pennsylvania Avenue, Towson

Address 410-832-2000

Phone No

21204

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: *gwm* DATE 10-8-98



Revised 9/5/95

99-149-SPH

149

Description

To Accompany Petition for Special Hearing

13.42 Acre Parcel

Arthur D. McComas, Jr. Property

East of Falls Road

Southeast of Ivy Hill Road

Eighth Election District, Baltimore County, Maryland

DMW

Daft McCune Walker, Inc.

200 East Pennsylvania Avenue

Towson, Maryland 21286

<http://www.dmw.com>

410 296 3333

Fax 410 296 4705

A Team of Land Planners,

Landscape Architects,

Engineers, Surveyors &

Environmental Professionals

Beginning for the same at the end of the second of the following two courses and distances measured from the intersection formed by the centerline of Ivy Hill Road and the centerline of Falls Road, (1) Northeasterly 610 feet, more or less, along the centerline of Ivy Hill Road to the intersection of the centerline of Broadmeade Court (Private Road), and thence (2) South 67 degrees 13 minutes 17 seconds East 1512.16 feet to the point of beginning, thence leaving said beginning point and running the fifteen following courses and distances, viz: (1) South 64 degrees 25 minutes 28 seconds East 437.71 feet, thence (2) South 06 degrees 51 minutes 24 seconds West 727.32 feet, thence (3) South 09 degrees 50 minutes 12 seconds East 49.41 feet, thence (4) North 85 degrees 33 minutes 55 seconds West 664.50 feet, thence (5) North 21 degrees 37 minutes 47 seconds West 356.08 feet, thence (6) North 69 degrees 40 minutes 46 seconds West 40.18 feet, thence (7) North 20 degrees 19 minutes 14 seconds East 27.81 feet, thence (8) North 67 degrees 51 minutes 12 seconds East 41.21 feet, thence (9) North 14 degrees 38 minutes 36 seconds East 100.00 feet, thence (10) South 74 degrees 32 minutes 56 seconds East 69.57 feet, thence (11) Northeasterly by a line curving to the left with a radius of 75.00 feet for a

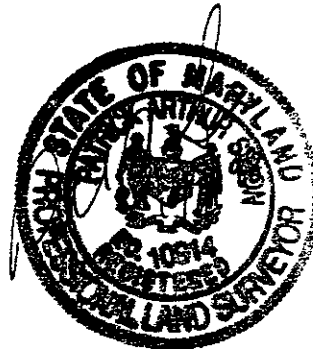
149

distance of 39.85 feet (the arc of said curve being subtended by a chord bearing North 86 degrees 47 minutes 47 seconds East 39.38 feet and having a beginning tangent bearing of South 77 degrees 59 minutes 01 second East) to a point of reserve curvature, thence (12) Northeasterly by a line curving to the right with a radius of 200.00 feet for a distance of 84.78 feet (the arc of said curve being subtended by a chord bearing North 83 degrees 43 minutes 15 seconds East 84.15 feet and having a departing tangent bearing of South 84 degrees 08 minutes 04 seconds East), thence (13) North 53 degrees 53 minutes 47 seconds East 86.29 feet, thence (14) North 17 degrees 08 minutes 25 seconds West 193.31 feet, and thence (15) North 50 degrees 34 minutes 24 seconds East 309.59 feet to the point of beginning; containing 13.42 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES
ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

October 7, 1998

Project No. 97030.X (L97030X)



149

BALTIMORE COUNTY, MARY
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

149

No. 059263

DATE 10.5.78 ACCOUNT Rec - 6150

AMOUNT \$ 100.00

RECEIVED FROM: A. McCombs Evry 11/11 Ro.

FOR: (030) So H. C.

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

PROCESSOR: 10/04/1998 10/04/1998 15:56:43

REF: 4506 CASHIER: AMEL. HWA. DRUMER

5 MISCELLANEOUS CASH RECEIPT

Receipt # 045779

CR NO. 059263

100.00 CHECK
Baltimore County, Maryland

99-149-SPH

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towns. Maryland on the property identified herein as follows:

Case: #99-149-SPH
SE/5 Ivy Hill Road, 1000' +/-
NE of Falls Road (by Major II)
8th Election District
3rd Councilmanic District
Legal Owner(s): June R. & Arthur D. McComas, Jr.

Special Hearing: to approve 2 non-density areas for skul-zoned portions of lots 7 and 8, specifically the R.C.-4 portion of lot 7, and the R.C.-5 portion of lot 8.

Hearing: Wednesday, December 2, 1998 at 8:00 a.m. AND Thursday, December 3, 1998 at 9:00 a.m. AND Friday, December 4 at 2:00 p.m., all in Room 106, County Office Building, 111 West Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible for special accommodations. Please Call (410) 887-3383.
(2) For information concerning the file and/or hearing, Please Call (410) 887-3381.

11/15/98 Nov. 12 0272843

CERTIFICATE OF PUBLICATION

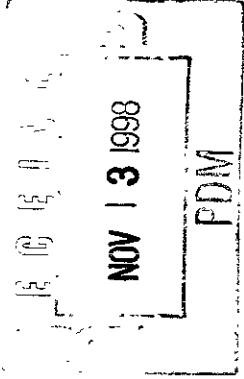
TOWSON, MD., 11/12/, 1998

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 11/12/, 1998.

THE JEFFERSONIAN,

A. Henrichson

LEGAL AD. - TOWSON



CERTIFICATE OF POSTING

RE: Case No.: Development Plan Conference and
Hearing Officer's Hearing

Petitioner/Developer: Ivy Manor, LLC

Date of Hearing/Closing: 12/2/98
12/3/98
12/4/98

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at Ivy Manor
Southeast side of Ivy Hill Road, Northeast of Falls Road

The sign(s) were posted on October 27, 1998
(Month, Day, Year)

Sincerely,

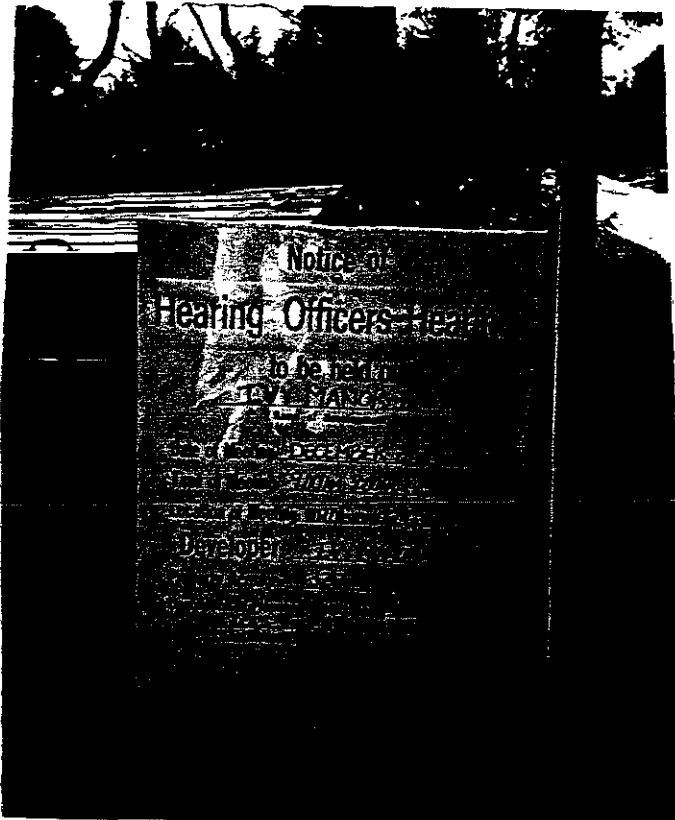
Anthony J. Vitti
(Signature of Sign Poster and Date)

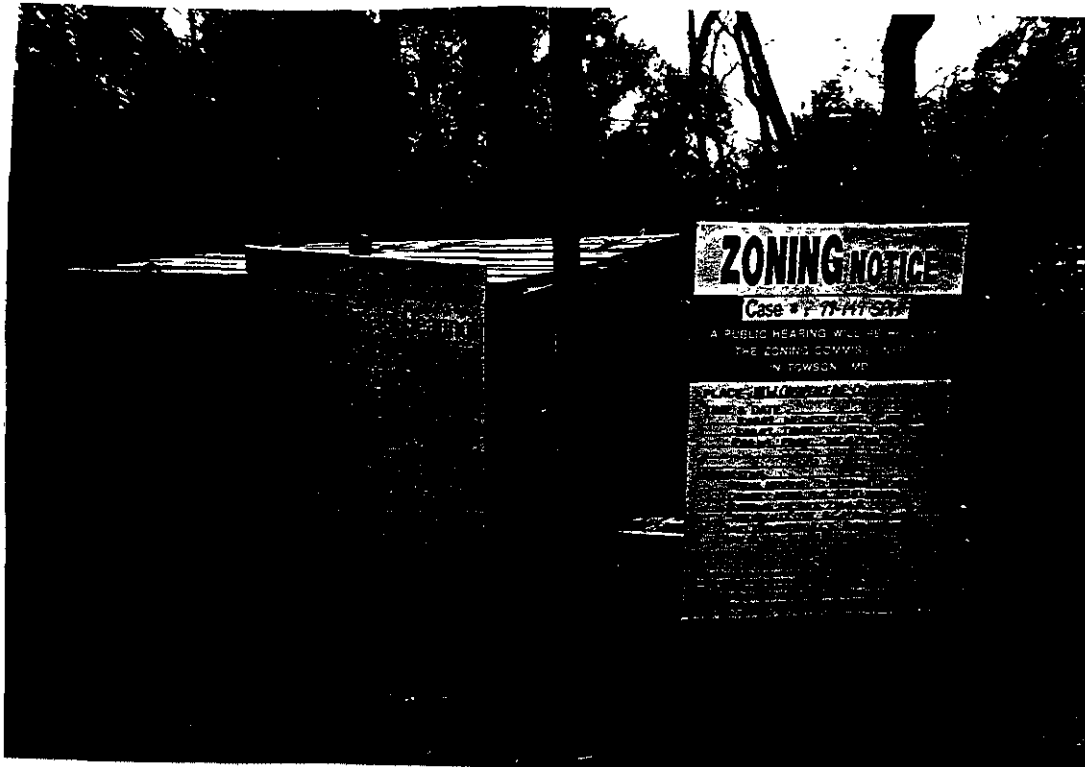
Anthony J. Vitti / Daft-McCune-Walker, Inc.
(Printed Name)

200 East Pennsylvania Avenue
(Address)

Towson, MD 21286
(City, State, Zip Code)

410-296-3333
(Telephone Number)







Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 149

Petitioner: Arthur D. & June R. McGomas

Location: Ivy Hill Road, 610'± from the E of Falls Road

PLEASE FORWARD ADVERTISING BILL TO:

Mr. G. Scott Barhight

NAME: Whiteford, Taylor & Preston, LLP.

ADDRESS: Suite 400 - 210 W. Pennsylvania Ave.
Towson, Md. 21204

PHONE NUMBER: 410-832-2050

AJ:ggs

(Revised 09/24/96)

99-149-SPH

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than ~~10-25-98~~

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 99-149 SPH.

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: A SPECIAL HEARING TO APPROVE TWO NON-DENSITY
AREAS FOR THE SPLIT ZONED PORTIONS OF LOTS
NUMBER 7 (1.71 AC. RC-4) AND 8 (2.56 AC. RC-5) of
Ivy MANOR II.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

TO: PATUXENT PUBLISHING COMPANY
November 12, 1998 Issue - Jeffersonian

Please forward billing to:

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLC
210 W. Pennsylvania Avenue
Suite 400
Towson, MD 21204

410-832-2050

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-149-SPH

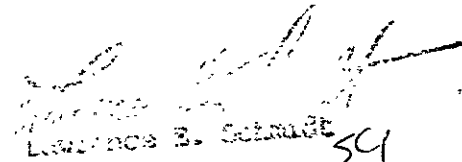
SE/S Ivy Hill Road, 1000' +/- NE of Falls Road (Ivy Manor II)

8th Election District – 3rd Councilmanic District

Legal Owner: June R. & Arthur D. McComas, Jr.

Special Hearing to approve 2 non-density areas for split-zoned portions of lots 7 and 8, specifically the R.C.-4 portion of line 7, and the R.C.-5 portion of lot 8.

HEARING: Wednesday, December 2, 1998 at 9:00 a.m. AND Thursday, December 3, 1998 at 9:00 a.m. AND Friday, December 4 at 2:00 p.m., all in Room 106, County Office Building, 111 West Chesapeake Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

October 23, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

HEARING OFFICERS HEARING

Project Name: Ivy Manor II

Project Number: 8-701

Location: SE/S Ivy Hill Road, NE Falls Road

Acres: 32.7

Developer: Ivy Manor LLC

Engineer: Daft, McCune & Walker, Inc.

Proposal: 8 Single Family Dwellings

***** AND *****

CASE NUMBER: 99-149-SPH

SE/S Ivy Hill Road, 1000' +/- NE of Falls Road (Ivy Manor II)

8th Election District – 3rd Councilmanic District

Legal Owner: June R. & Arthur D. McComas, Jr.

Special Hearing to approve 2 non-density areas for split-zoned portions of lots 7 and 8, specifically the R.C.-4 portion of line 7, and the R.C.-5 portion of lot 8.

HEARING: Wednesday, December 2, 1998 at 9:00 a.m. AND Thursday, December 3, 1998 at 9:00 a.m. AND Friday, December 4 at 2:00 p.m., all in Room 106, County Office Building, 111 West Chesapeake Avenue

Arnold Jablon, Director

c: G. Scott Barhight, Esquire
June & Arthur McComas
Ivy Manor LLC

- NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY NOVEMBER 17, 1998.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

Come visit the County's Website at www.co.ba.md.us





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

November 27, 1998

G. Scott Barhight, Esq.
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue, Suite 400
Towson, MD 21204

RE: Item No.: 149
Case No.: 99-149-SPH
Location: Ivy Hill Road

Dear Mr. Barhight:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on October 8, 1998.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

Come visit the County's Website at www.co.ba.md.us



Date: October 29, 1998

TO: Arnold Jablon

FROM: R. Bruce Seeley *RBS/1/98*

SUBJECT: Zoning Item #149

Ivy Manor - Ivy Hill Road

Zoning Advisory Committee Meeting of October 19, 1998

- The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.
- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:
 - X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).
 - X Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
 - Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).



Baltimore County
Fire Department

Office of the Fire Marsha
700 East Joppa Road
Towson, Maryland 21286-550
(410)887-4880

October 29, 1998

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF OCTOBER 19, 1998

Item No.: See Below

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

143, 144, 145, 147, 148, 149, AND 150

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File




B A L T I M O R E C O U N T Y , M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
 Department of Permits & Development
 Management

Date: October 28, 1998

FROM:  Robert W. Bowling, Chief
 Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
 for October 26, 1998
 Item Nos. 142, 143, 144, 145, 146,
 147, 148, (149) 150, 151, 152, & 160

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE1026.NOC

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: October 20, 1998

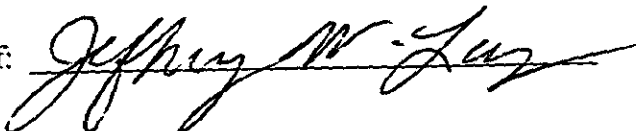
FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Office of Planning has no comment on the following petition (s):
Item No (s): 148, ~~149~~ and 150

If there should be any questions or this office can provide additional information, please
contact Jeffrey Long in the Office of Planning at 410-887-3480.

Section Chief:



AFK/JL



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

Date: 10.20.94

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 149 JCM

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

10 Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL HEARING
Ivy Manor II, SE/S Ivy Hill Road, 1000' +/- NE of
Falls Road, 8th Election District, 3rd Councilmanic

Legal Owners: Arthur D. and June R. McComas, Jr.
Developer: Ivy Manor LLC

Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case Number: 99-149-SPH

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates of other proceedings in this matter and of the passage of any preliminary or final Order.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 1998, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).



PETER MAX ZIMMERMAN

accommodate trash trucks. If retained, the island must be owned and maintained by the homeowners association.

Private Road "B" must meet the same standards as Public Road "A". In particular, the following criteria must be met:

1. a minimum 18-foot-wide pavement on a 40-foot-wide graded ~~right-of-way~~ *area*
2. a minimum centerline curve radius of 125 feet
3. maximum grade of 12%
4. conformance with other design standards will be checked during final design

It shall be the responsibility of the Developer's engineer to clarify all rights-of-way within the property and to initiate such action that may be necessary to abandon, widen or extend said rights-of-way. The Developer shall be responsible for the submission of all necessary plats and for all costs of acquisition and/or abandonment of these rights-of-way.

Guardrails are required for protection to pedestrians along the public road and/or the storm drain reservation and shall be the Developer's responsibility. The guardrails shall be constructed in accordance with Baltimore County Standards.

In accordance with Bill No. 32-72, street lights are required along all road frontages of subdivisions. The Developer will be responsible for the full cost of installation of the cable, poles and fixtures. Along new public roads, the County will assume the cost of the power when the roads have been accepted for County maintenance. Along existing roads, the County will assume the cost of power after installation.

Show street lights on the plan.

Driveway "C" may be built as shown on the plan.

The private roads, if allowed, shall be designed and constructed to the Department of Public Works' Standards and Specifications. The roads shall be inspected and certified to the Baltimore County Bureau of Engineering & Construction by the Developer's engineer.

Security must be posted prior to the issuance of a building permit to insure completion of any private improvement. Upon satisfactory completion of the private improvements and certification by a Professional Engineer that said improvements have been constructed in accordance with County standards and specifications, the security will be refunded.

STORM DRAINS AND SEDIMENT CONTROL COMMENTS:

The Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and right-of-way both

